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To

Date: 16 April 2019

Smt. Yogita Jadhav

Deputy General Manager

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Via email to Mr Abhishek Rozatkar, Assistant General Manager (abhishekr@sebi.gov.in)

Sub: Consultation paper on Issuance of shares with Differential Voting Rights (DVRs)

At the outset, we, Incwert Advisory Private Limited appreciate the opportunity to submit our response to the **Consultation paper on Issuance of shares with Differential Voting Rights (DVRs).**

Established in October 2018, we are a valuation and financial research services provider in India. We pride ourselves in bringing together seasoned professionals who have in-depth experience in valuation and a broad spectrum of experience in financial advisory & management consulting. Our professionals have extensive knowledge of local laws, rules and regulations, enabling us to help clients minimise complexities in valuation-related matters.

Incwert's management and advisory board comprises professionals who have over 10-15 years of experience and are members of eminent professional bodies such as The Institute of Chartered Accountants of India (ICAI) and The Chartered Financial Analysts (CFA) Institute, US.

Summary of our recommendation: With regards to the mentioned consultative paper, we have proposed few suggestions which are listed in the table below in greater details. In summary:

- We are of the opinion that pricing of FR shares in situations like takeover or buy-back should have floor to protect the interests of minorities. This will help in creating a more conducive framework for FR shares. Recently, Singapore has made certain changes to its take-over code to state that the offer price for their One Vote (OV) shares should be same as that of Multiple Vote (MV) shares. OV shares can be compared to FR shares and MV shares can be compared to SR shares in the Indian context.
- We have listed our suggestions on the valuation framework for such situations in the table below

We would be happy to hear and discuss the merits / demerits of suggestions proposed by other practitioners and request to be included in the deliberation process.

Our responses to the various points are mentioned below in the requested format –

1. Our details:

- **Name**: Incwert Advisory Private Limited
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2. **Suggestions/ Comments**

Sr No.	Pertains to specific recommendation in DVR Group Report	Suggestions	Rationale
1	Point (3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ("SEBI Takeover Code") on Provisions relating to open offer which reads "The pricing of an open offer for ordinary equity shares will be based on trading price of ordinary equity shares and ***pricing of FR Shares will be based on trading pricing of FR shares.***	Price offered to FR shareholders should also have a reference to the negotiated price or the highest price paid by the acquirer for acquiring ordinary equity shares of the target company. The price offered to FR shareholders may be at a discount of not more than lower of the following: 1. the discount to ordinary shares at which the FR shares were originally issued 2. minimum discount at which FR shares have traded during the fifty-two weeks immediately preceding the date of the public announcement	To protect the interest of the minorities (who could usually be the holders of FR shares), exit should be provided to the holders at a price which offsets that part of the prevailing discount in FR shares, if any, which was driven by lack of volumes. If at the time of issuance of FR shares the value of control was determined to be certain percentage, then at the time of change of control, the value offered to FR shareholders should not be detrimental compared to ordinary shares. We believe that higher voting rights are meaningful and substantive rights, but the value of such right is not readily and objectively measurable and hence, to protect value erosion that may arise due to lower volume should be bridged by referencing the offer price to FR shareholders with offer price to ordinary shareholders. To draw a parallel, recently in January 2019, The Monetary Authority of Singapore (MAS) issued a revised Singapore Code on Take-overs and Mergers (the Code) to set out how it will apply to a company with dual classes of shares (a DCS company), i.e., a company with shares carrying multiple votes (MV Shares) as well as shares carrying one vote (OV Shares). **One of the revisions states that Offer price for MV Shares and OV Share to be comparable**. Where a shareholder comes under an obligation to make a general offer for a company, Rule 18 of the Takeover Code states

			that, "Where a company has more than one class of equity share capital, a comparable offer must be made for each class". Note 1 on Rule 18 has been amended to state that where an offer is made for MV Shares and OV Shares and the shares differ only in their voting rights, the offer will be comparable if the ratio of the offer values is equal to one. **MAS noted that its has done this revision to ensure that where an offeror makes an offer for a DCS company, the offer price for MV shares and OV shares should be the same**. This approach provides greater certainty to market participants and potential offerors. In addition, it acts as a safeguard for OV shareholders by ensuring that any premium paid to MV shareholders is also paid to OV shareholders. It concluded that this change will ensure greater certainty for the market and **safeguards for minority** shareholders. Source - http://www.mas.gov.sg/News-and-Publications/Media-Releases/2019/Code-on-Take-Overs-and-Mergers-Revised-to-Clarify-Application-for-Dual-Class-Share-Companies.aspx
2.	Pricing of FR shares under Securities and Exchange Board of India (Buy- Back of Securities) Regulations, 2018 ('Buy Back Regulations') is suggested to be **priced differentially and include a justification for pricing FR shares differentially** (refer page 22)	We are suggesting that "…to be priced differentially..." in the adjacent clause should not be completely discretionary. We are suggesting that the maximum discount on FR shares compared to ordinary shares should ideally be restricted to the lower of the following: 1. the discount to ordinary shares at which the FR shares were originally issued 2. minimum discount at which FR shares have traded during the fifty-two weeks immediately preceding the date	To protect the interest of the minorities (who could usually be the holders of FR shares), exit should be provided to the holders at a price which offsets that part of the prevailing discount in FR shares, if any, which was driven by lack of volumes. If at the time of issuance of FR shares the value of control was determined to be a certain percentage, then at the time of change of control, the value offered to FR shareholders should not be detrimental compared to ordinary shares. We believe that higher voting rights are meaningful and substantive rights, but the value of such right is not readily and objectively measurable and hence, to protect value erosion that may arise due to lower volume should be bridged

		of the public announcement	by referencing the offer price to FR shareholders with offer price to ordinary shareholders.

If you or your staff have questions or seek further clarification, please do not hesitate to contact us.

Best Regards,

punit khandelwal

Punit Khandelwal

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Incwert Advisory Private Limited

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